

STATEMENT OF CONSIDERATION RELATING TO 911 KAR 2:130
Amended after Comments

- (1) A public hearing on 91 KAR 2:130 was held on May 21, 2003 at 9:00 a.m. at the Health Service Auditorium, Cabinet For Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.
- (2) The following people attended this public hearing or submitted written comments:
- | | |
|----------------|---|
| David Vance | |
| Steve Shannon | KARP, Inc |
| Fred Dent | parent |
| Lisa Murphy | Lifeskills, Inc. |
| Carl Myers | Psychologist |
| Mary Simmons | |
| Sarah Jeffries | |
| Teresa Kareem | Dorman Center |
| Mike Stickler | parent |
| Karen Ogle | Baptist Health Care Systems, Central Baptist Hospital |
| Sandra Milburn | Step One Therapy |
- (3) The following people from the promulgating administrative body attended this public hearing or responded to the written comments:
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| Trish Howard | Executive Staff Advisor, Commission for Children with Special Health Care Needs |
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Summary of Comments and Responses

- (1) Subject Matter: Individualized Family Services Plan (IFSP)
- (a) Comment: Mr. Dent submitted comments regarding the requirement that services be provided in a natural environment. He states that his child received five different therapies a week and benefited greatly from being in a group intervention environment in that a group intervention addresses almost all five of the skill areas at one time. He further stated that a controlled environment is a better environment for some children, such as those with autism, than a natural environment.
- (b) Response: The administration understands that in some instances a center-based program is a better environment for some children and has provided allowances for center-based programs. However, the federal perspective is that a child learns better in a natural environment using naturally occurring events, strategies and activities. Therefore, it is federally mandated that services be

provided in a natural environment “to the maximum extent appropriate”. In addition, 34 CFR 303.344 states “The IFSP must include a statement...including the natural environments in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment.” States are under significant pressure from the federal Office of Special Education Programs (OSEP) to provide services in natural environments. \$5.8 million dollars of federal funding are at risk if we are not in compliance with this mandate. The regulation will not be amended as a result of this comment.

(c) Comment: Ms. Ogle commented that the regulation is “very muddy” on natural environment and parent choice. She also stated that “it is getting harder and harder for the parent to choose a center-based service. It is sometimes appropriate at times to use center-based therapy. As a parent and as a provider, I think there needs to be more emphasis on parent choice and I think we are very much losing that.” Marianne Ramsey expressed the same concerns and added that she believes that her agency is being discriminated against because she provides services in a clinic setting as opposed to a natural setting.

(d) Response: See response (b). Starting in 1998, in Kentucky, we implemented natural environments over a 5-year period. In 2002, those 5 years expired. Therefore, this regulation now mandates that all Part C services must be delivered in a natural environment. If it cannot be, the IFSP must be documented with the reason. The regulation will not be amended as a result of this comment.

(e) Comment: Dan Howard of KARP submitted comments recommending that the original language in Section 2(9)(g)4. be restored regarding natural environments.

(f) Response: See response (d).

(g) Comment: Mr. Myers submitted a suggestion that the wording on page 10, lines 1 and 2 be amended to state “allows families to choose...”.

(h) Response: The CCSHCN agrees with the suggestion and will amend the regulation accordingly.

(i) Comment: Ms. Milburn submitted a comment stating that the regulation provides for a cancellation at the request of a family but not the therapist. What happens if the therapist is ill or has a medical emergency?

(k) Response: Section 2(1) addresses the fact that a family can decline a service they don’t want even though the IFSP team has determined it is needed. This is a federal requirement and ensures that a family may decline a service without jeopardizing other services on the IFSP. It is not addressing cancellations of appointments. Any cancellation of appointments by either party must be documented with the reason. The CCSHCN must report annually to OSEP the percentage of IFSP services that are on the plan that are not provided; therefore, it is critical that the reasons for not providing services is accurately documented. The regulation will not be amended as a result of the comment.

(2) Subject Matter: Assessment instruments

(a) Comment: Mr. Myers commented that the requirement that assessments be conducted using criterion-referenced instruments is very problematic because

these instruments do not exist for all of the five developmental areas and very few exist for the birth to two year age range. Even if such an instrument existed for a particular area, Mr. Myers believes that it is inappropriate to limit a professional's choice of instruments to only those that are criterion-referenced. He urges the deletion of lines 18 and 19 on page 3.

(b) Response: The Cabinet believes that there are sufficient criterion-referenced instruments to comply with this requirement. The regulation is not being amended as a result of this comment.

(c) Comment: Lisa Murphy commented, "it is not always possible to find criterion-referenced instruments to assess such things as behaviors, autism or cerebral palsy. Those kinds of things may interfere with testing. She further commented that even if there is a criterion-referenced test available, you might not be able to perform or complete it with a particular child. Also, many of the assessment tools commonly used, behavioral checklists and sensory profiles, are not criterion-referenced. If we mandate these tools, we will not be able to implement the regulations."

(d) Response: Behavior checklists and sensory profiles are additional assessment methods which may be used in addition to the criterion-referenced instrument, in accordance with Section 1(3)(a). If an assessor believes that he cannot perform or complete an assessment on a child, the service coordinator must be contacted immediately so that another assessor may be chosen to complete the assessment process. The regulation is not being amended as a result of this comment.

(3) Subject: Assessment reports

(a) Comment: Mr. Myers and Mr. Strickler commented that the requirement that assessment reports be free of professional jargon is insulting and demeaning to families because it assumes that all parents are ignorant and incapable of learning. Mr. Strickler also commented that it interferes with his ability to communicate with other professionals outside of First Steps because he cannot use the correct terminology. Ms. Howard commented that "it is demeaning and insulting to have non-legal or non-professional jargon in our documentation because we could be subpoenaed to court and it looks very, very unprofessional."

(b) Response: Federal requirements stipulate that the assessment reports and IFSP must be in language that is easily understood by the family. The regulation will be amended to eliminate "free of professional jargon" as a result of this comment.

(c) Comment: Sandra Milburn commented that the regulation is vague as to when the ten-day requirement begins and ends with regard to assessments.

(d) Response: The ten days starts when the assessor actually receives the written assessment referral from the service coordinator as established in Section 1((8)(a) and ends on the date that the completed written report is received by the service coordinator. The regulation will be amended to clarify this requirement as a result of this comment.

(e) Comment: Ms. Milburn submitted a question as to whether illnesses of a provider or unusual circumstances, such as medical emergencies are allowed for missing the timeframe.

(f) Response: The federal regulation only specifies “the illness of a child or at the request of a parent” as explanations for timeframes not being met. However, the CCSHCN recognizes that other extenuating circumstances may occur which result in an assessment not be completed in a timely manner. While it is extremely important that the initial IFSP meeting occur within the forty-five day timeframe, it is equally important that all assessment reports be submitted prior to the IFSP meeting occurring. Therefore, documentation must be present that would explain why the timeframes were not met for federal reporting purposes. The regulation is not being amended as a result of this comment.

(g) Comment: Marsha Schofield submitted a question as to what is meant by “supportive documentation” in Section 1(8)(c).

(h) Response: A staff note documenting the delay circumstances would be considered supportive documentation.

Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

Page 1

Section 1(1)(a)

Line 19

After “within”, delete “all”.
In lieu thereof, insert “the”.

After “areas of”, delete “eligibility”.
In lieu thereof, insert the following:

Development that were determined to be below the normal range as identified on the primary level evaluation.

Pages 1 and 2

Section 1(1)(b)

Lines 20 through 2

After “(b)”, delete this paragraph in its entirety.
In lieu thereof, insert the following:

The following shall complete an assessment:

1. A discipline most appropriate to assess the area of documented delay and of which the family has the greatest concern; and
2. The fewest additional disciplines as needed to assess the other areas identified as delayed.

Page 3

Section 1(3)(c)

Line 22

After "below the", insert "instrument's".

Pages 3 and 4

Sections 1(4) and (5)

Lines 23 through and 11

After "(4)", delete these subsections in their entirety.

In lieu thereof, insert the following:

If after the initial assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The parent has a documented concern that would necessitate another assessment;

(b) Why there is not a current provider on the IFSP team that can assess the area of concern; and

(c) What has changed in the child's ability to warrant the subsequent assessment.

Page 4

Section 1(6)

Line 12

Delete "(6)".

In lieu thereof, insert "(5)".

Section 1(7)

Line 15

Delete "(7)".

In lieu thereof, insert "(6)".

Page 6

Section 1(8)(a)

Line 2

Delete "(8)".

In lieu thereof, insert "(7)".

Page 6

Section 1(8)(a)1.

Line 6

After "documentation:", insert the following:

2. The Point of Entry Update Form; and

3. The primary level evaluation report; or

Section 1(8)(a)2.

Line 7

Delete "2.".

In lieu thereof, insert "4.a.".

Line 8

Delete "and".

Section 1(8)(a)3.

Line 9

Delete "3.".

In lieu thereof, insert "b.".

After "Form", insert the following:

; and

c. The primary level evaluation report.

Section 1(8)(b)3.

Line 15

After "language", delete "free of professional jargon".

In lieu thereof, insert the following:

that the child's family can easily understand.

Section 1(8)(c)

Line 18

After "circumstances", insert "in his staff notes".

Page 8

Section 2(2)(c)

Line 2

After "team", insert the following:

that shall include individuals identified in the responsible party column of the IFSP.

Page 9

Section 2(3)(d)

Line 10

Delete "due to illness,".

In lieu thereof, insert the following:

for reasons such as illness or an

Line 11

Delete "etc.".

Page 10

Section 2(3)(d)

Line 1

Delete the following:

Provide families with the ability.

In lieu thereof, insert "Allow families".

Page 12

Section 2(7)(h)

Line 15

After “changes”, delete the following:
employers or becomes an independent provider.

In lieu thereof, insert “provider numbers”.

Page 13

Section 2(9)(a)

Line 12

Delete “SB60”.

In lieu thereof, insert “KRS 200.664(6)”.

Page 14

Section 2(9)(f)

Line 23

After “(f)”, insert “1.”.

Page 15

Section 2(9)(f)

Lines 5 through 9

Renumber subparagraphs 1. through 5. as clauses a. through e.

Section 2(9)(f)5.

Line 10

After “environments.”, insert the following:

2. Strategy and activity statements that shall be practical suggestions that assist the family and other team members in achieving the family’s desired outcome for the child and family.

a. Typically strategies shall refer to the steps or methods a family and team will use to accomplish the outcomes;

b. Activities shall refer to what will be done to embed strategies into the routines or regular events that occur in the child’s natural environment;

c. The strategies and activities area shall include criteria of how the outcomes shall be measured to determine mastery or progress and shall be developmentally appropriate, functional, valued by others, realistic and achievable and promote generalized use of skill.

Page 18

Section 2(9)(k)3.

Line 9

After “meeting”, insert the following:

;

1. Documentation substantiating the following if the child is being provided group intervention:

(i) If the child is enrolled in day care or attending a group during normal routines, why the therapeutic intervention cannot be provided in the child’s current group setting;

(ii) Therapeutic intervention during group shall be directly related to the child's individualized strategies and activities as identified on the IFSP.

Page 19

Section 2(16)

Line 18

After "recommendation", insert the following:
, verifies it relates to a chosen outcome.

Page 20

Section 3(3)

Line 2

Delete "(3)".
In lieu thereof, insert "Section 4".

Line 3

Delete "January".
In lieu thereof, insert "October".